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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/597,969
Filing Date: August 15, 2006
Appellant(s): BERKVENS, WINFRIED ANTONIUS HENRICUS

_____

Hay Yeung Cheung (Reg. No. 56,666)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on November 5, 2008 appealing from

the Office action mailed on June 6, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP 1322094   LEGOUT   6/03

WO0191417   KAUFMAN ET AL.   11/01

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 6, and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Legout et al. (EP 1 322 094 A1), hereinafter Legout. Legout is cited in the Information Disclosure Statement filed by the applicant on 8/15/2006.

With respect to claim 1, Legout discloses a system for distributing a content (a content delivery network delivering content over the network, [0011], lines 13-15; Internet, with a number of end users and surrogate servers, [0072], lines 1-4), the system comprising: a receiver for receiving the content ([0028], lines 26-30, receiver is interpreted as a client since a client can be an application or system that obtains results), the receiver comprising: a selector ([0004], lines 45-48, receiver is interpreted as a client) for selecting a distributor of the content out of a plurality of distributors ([0004], lines 45-48, 41-43); content-requesting means ([0004], lines 43-44, receiver is interpreted as a client) for requesting the content from the distributor selected ([0004], lines 43-44); receiving means for receiving the content ([0028], lines 26-30, a client receives content since it is an application or system that obtains results); identity-

determining means for determining an identity associated with the content ([0068], lines

1-8; [0069], lines 9-26); and a verifier for verifying an availability of the content at the

distributor based on the identity determined ([0027], lines 14-15; [0068], lines 1-8;

[0069], lines 9-26), the distributor of the content (surrogate server adapted to deliver

content requested by a user, [0011], lines 15-16)comprising: content request-receiving

means for receiving a request for the content (device used by the user for connecting to

the network, [0029], lines 38-46); and a dispatcher for dispatching the content (device

used by the user for connecting to the network, [0029], lines 38-46); wherein the

distributor is arranged to dispatch the content to the receiver (device used by the user

for connecting to the network, [0029], lines 38-46); in response to receiving a request for

the content from the receiver (content requested by user, [0011], line 16), and wherein

the receiver is arranged to only select the distributor if the verifier verified the availability

of the content at the distributor (checking whether the closest surrogate server has the

ability to serve the content requested by the user, [0011], lines 24-35; [0017]; [0018]).

    With respect to claim 2, Legout discloses wherein the receiver comprises

identity-receiving means ([0068], lines 1-8); ([0028], lines 26-30); a process verifies if

content is accessible from the closest server, and if the content is available, the process

returns the chosen server identifier; server identifier represents a distributor; the

receiver in interpreted as a client since a client is an application or system that obtains

results, therefore, the receiver (i.e. client) may determine an identity by receiving an

identity); and wherein the receiver is arranged to determine an identity by receiving the

identity from one out of the plurality of distributors ([0068], lines 1-8); a process verifies

if content is accessible from the closest server, and if the content is available, the

process returns the chosen server identifier; server identifier represents a distributor. It

is apparent that a plurality of servers is considered when determining the closest server.

The receiver in interpreted as a client ([0028], lines 26-30) since a client is an

application or system that obtains results, therefore, the receiver (i.e. client) may

determine an identity by receiving an identity).

      With respect to claim 3, Legout discloses wherein the receiver comprises identity

requesting means, and wherein the receiver is arranged to receive the identity after

requesting the identity of the content from the distributor, wherein the distributor (103)

(end user sends an HTTP request, [0078], lines 55-58; the end user receives a meta-file

containing real content id and the optimal surrogate server for each meta- content id,

[0079], lines 24-29), comprises: identity request-receiving means for receiving a request

for the identity of the content (device used by the user for connecting to the network,

[0029], lines 38-46; end user sends an HTTP request, [0078], lines 55-58; the end user

receives a meta-file containing real content id and the optimal surrogate server for each

meta-content id, [0079], lines 24-29); an identity dispatcher for dispatching the identity

and herein the distributor is arranged to dispatch the identity to the receiver in response

to receiving a request for the identity of the content from the receiver; (device used by

the user for connecting to the network, [0029], lines 38-46; proxy server that returns to

the user, a meta-file containing identities, [0079], lines 24-29).

With respect to claim 4, Legout discloses wherein the system comprises a further distributor (content delivery network having at least two surrogate servers, [0011], 13-15), wherein the receiver is arranged to receive a further identity from the further distributor (end user sends an HTTP request, [0078], lines 55-58; the end user receives a meta-file containing real content id and the optimal surrogate server for each meta-content id, [0079], lines 24-29), wherein the verifier comprises a comparator for comparing the identity associated with the content with the further identity received, wherein the verifier is arranged to verify the availability of the content at the further distributor if the identity equals the further identity (comparing the identifier of the content requested by the user and the identifiers of the content contained in the closest surrogate server, [0017], lines 21-23, [0018]), and wherein the receiver is arranged to only select the further distributor if the verifier verified the availability of the content at the further distributor (checking whether the closest surrogate server has the ability to serve the content requested by the user, [0011], lines 24-35, [0017], [0018]).

With respect to claim 6, Legout discloses wherein the receiver comprises identity deriving means, and wherein the receiver is arranged to derive the identity from content received from one out of the plurality of distributors (proxy server that returns to the user, a meta-file containing real content id and the surrogate server for each meta-content id, [0079], lines 24-29.

With respect to claim 8, Legout discloses a receiver for receiving the content ([0028], lines 26-30, receiver is interpreted as a client since a client can be an application or system that obtains results), the receiver comprising: a selector ([0004], lines 45-48, receiver is interpreted as a client) for selecting a distributor of the content out of a plurality of distributors ([0004], lines 45-48, 41-43); content-requesting means ([0004], lines 43-44, receiver is interpreted as a client) for requesting the content from the distributor selected ([0004], lines 43-44); receiving means for receiving the content ([0028], lines 26-30, a client receives content since it is an application or system that obtains results); identity-determining means for determining an identity associated with the content ([0068], lines 1-8; [0069], lines 9-26); and a verifier for verifying an availability of the content at the distributor based on the identity determined ([0027], lines 14-15; [0068], lines 1-8; [0069], lines 9-26), and wherein the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor (checking whether the closest surrogate server has the ability to serve the content requested by the user, [0011], lines 24-35;. [0017]; [0018]).

With respect to claim 9, Legout discloses a method of distributing a content, (surrogate server adapted to deliver content requested by a user, [0011], lines 15-16), comprising the steps of: selecting, by a receiver ([0004], lines 45-48, receiver is interpreted as a client since a client is an application or system that obtains results) distributor of the content out of a plurality of distributors ([0004], lines 45-48, 41-43), requesting, by the receiver ([0004], lines 43-44, receiver is interpreted as a client since

a client is an application or system that obtains results), the content from the distributor

selected ([0004], lines 43-44), dispatching the content to the receiver in response to

receiving the request for the 'content from the receiver (device used by the user for

connecting to the network, [0029], lines 38-46, when the device dispatches content, a

method to operate the device for dispatching content is inherent), receiving the content

at the receiver (device used by the user for connecting to the network, [0029], lines 38-

46, when the device receives content, a method to operate the device for receiving

content is inherent), determining an identity associated with the content (content will be

mapped to the identity object, [0060] lines 16-18), and verifying an availability of the

content at the distributor ([0011], lines 16-17, 24-35) based on the identity determined

(comparing the identifier of the content requested by the user and the identifiers of the

content contained in the closest surrogate server, [0017], lines 21- 23, [0018]), and

wherein, in the step of selecting, the distributor is only selected if the verifier verified the

availability of the content at the distributor ([0011], lines 24-35; [0017], [0018]).

With respect to claim 10, Legout discloses a computer program product enabling

a receiver that is part of a system for distributing a content (process for selecting a

surrogate server in a content delivery network having at least two servers, [0011], line

13-15), to select a distributor of the content (out of a plurality of distributors process for

selecting a surrogate server in a content delivery network having at least two servers,

[0011], line 13-15), to request and receive the content from the distributor selected

(device used by the user for connecting to the network, [0029], lines 38-46), to

determine an identity associated with the content (content will be mapped to the identity

object, [0060] lines 16-18),, to verify an availability of the content at the distributor based

on the identity determined (comparing the identifier of the content requested by the user

and the identifiers of the content contained in the closest surrogate server, [0017], lines

21-23, [0018]), and to only select the distributor after verifying the availability of the

content at the distributor (checking whether the closest surrogate server has the ability

to serve the content requested by the user, [0011], lines 24-35; [0017]; [0018]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or

described as set forth in section 102 of this title, if the differences between the subject

matter sought to be patented and the prior art are such that the subject matter as a

whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall

not be negatived by the manner in which the invention was made.

Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Legout as applied to claims 1,2, and 4 above, in view of Kaufman et. al. (WO 0191417

A2), hereinafter Kaufman. Kaufman is cited in the Information Disclosure Statement
filed by the applicant on 8/15/2006.

With respect to claim 5, Legout discloses limitations of a system distributing
content, a receiver that comprises identity-receiving means, and wherein the system
comprises a further distributor. However, Legout does not disclose a system wherein
the receiver comprises quality- determining means for determining a quality of receiving
the content of the distributor, and wherein the receiver is arranged to select the further
distributor in dependence upon the quality determined. Kaufman discloses the limitation
wherein the receiver comprises quality- determining means for determining a quality of
receiving the content of the distributor (client wrapper object determines the quality of
the stream from the CDN, page 22, lines 9-12) and wherein the receiver is arranged to
select the further distributor in dependence upon the quality determined (detects a
problem with network quality, it initiates a CDN switch-over...to link to another CDN for
the content, page 20, lines 11- 13; client sends a request to the new CDN server, page
22, lines 14-21). Therefore, it would have been obvious to one of ordinary skill in the art
at the time of the invention to modify the teachings of Legout with the teachings of
Kaufman to incorporate quality-determining means into a system for distributing content,
in order to cause little or no disruption to the content being displayed (page 22, lines 3-
4).

With respect to claim 7, Legout discloses wherein the receiver comprises
identity- receiving means. However, Legout does not disclose wherein the system
comprises a further distributor, wherein the further distributor comprises: verification

request-receiving means and a verification result dispatcher for dispatching verification

result. Kaufman discloses wherein the system comprises a further distributor (another

CDN, page 20, lines 11-13), wherein the further distributor comprises: verification

request-receiving means for receiving a verification request (client object monitor sends

a switch-over request message to the monitoring manager, page 20, lines 16-18, when

a switch-over request message is sent to monitoring manager, the means for receiving

the message is inherent) for verifying availability at the further distributor of content

associated with a further identity (selects a new CDN based on such factors as

availability, page 21, lines 3-5), the further identity being part of the verification request

(identity of the new CDN...is provided to the client in the form of a CDN switch-over

message, page 21, lines 7-9); and a verification result dispatcher for dispatching a

verification result (switch-over reply message, page 21, lines 12-13), wherein the further

distributor is arranged to, in response to receiving the verification request from the

receiver, the further distributor is arranged to verify availability at the further distributor

of content associated with the further identity and to dispatch the verification result to

the receiver (monitoring manager selects a new CDN based on such factors as

availability, page 21, lines 3-5; switch-over reply message received by client, page 21,

lines 12-13), and wherein the receiver is arranged to only select the further distributor

after dispatching a verification request to the further distributor and receiving a

verification result that verifies the availability of the content at the further distributor

(monitoring manager selects a new CDN based on such factors as availability, page 21,

lines 3-5, switch-over reply message received by client, page 21, lines 12-13).

Therefore, it would have been obvious to one of ordinary skill in the .art at the time of

the invention to modify the teachings of Legout with the teachings of Kaufman to

incorporate a further distributor with verification means and a verification dispatcher with

a system containing a receiver with identity receiving means, in order to cause little or

no disruption to the content being displayed (page 22, lines 3-4).

(10) Response to Argument

      Appellant's arguments have been fully considered but they are not persuasive.

In the brief, the appellant argues in substance that the appellant disagrees with the

interpretation of the examiner for the claimed "receiver". In reply, the examiner has

provided the broadest and proper interpretation for the claimed limitation in view of the

functions of the receiver because receiver in the cited reference provides all the

functions equivalent to that of the claimed receiver. Legout teaches the receiver as a

client ([0028], lines 26-30) since a client is an application or system that obtains results.

The receiver (i.e. client) may include identity-determining means since "the database

holds for all surrogate servers the stored content identifiers" ([0069], lines 9-11) and a

verifier since "a process verifies that the requested content is actually accessible" from

a server ([0068], lines 1-8).

      Appellant further argues that "the end-user's computer" of Legout does not

provide any features even comparable to applicant's claimed selector for selecting a

distributor of the content out of a plurality of distributors; identity-determining means for

determining an identity associated with the content; and a verifier or verifying an availability of the content at the distributor based on the identity determined."

In reply, the Examiner respectfully disagrees with Applicant's arguments, because the office action also points out that Legout teaches the receiver as a client ([0028], lines 26-30), since a client is an application or system that obtains results. A client may include the features of a selector ([0004], lines 45-48) for selecting a distributor of the content out of a plurality of distributors (0004), lines 45-48, 41-13) since there is a process for selecting a server in a network having at least two servers; identity- determining means for determining an identity associated with the content since "the database holds for all surrogate servers the stored content identifiers" ([0069], lines 9-11); and a verifier for verifying an availability of the content at the distributor based on the identity determined since "the process verifies that the requested content is actually accessible" from a server ([0068], lines 1-8).

Applicant further argues that Legout does not disclose "the receiver is arranged to only select the distributor if the verifier verified the availability of the content at the distributor."

In reply, the Examiner respectfully disagrees with Applicant's arguments, because Legout discloses, "if the content is available, the process terminates (step 12) and returns the chosen surrogate server identifier" ([0068], lines 1-8); server identifier represents a distributor.

Appellant also argues that, Legout fails to teach or suggest "a receiver." The
Examiner respectfully disagrees with Applicant's arguments, because the receiver is
interpreted as a client ([0028], lines 26-30), since a client is an application or system
that obtains results.

Appellant further argues that "the receiver is arranged to determine an identity by
receiving the identity from one out of the plurality of distributors."

In reply, the Examiner respectfully disagrees with Applicant's argument, since
Legout does teach a process that verifies content is accessible from the closest server,
"if the content is available, the process terminates (step 12) and returns the chosen
surrogate server identifier" ([0068], lines 1-8); server identifier represents a distributor. It
is apparent that a plurality of servers is considered when determining the closest server.
The office action also points out that Legout teaches the receiver as a client ([0028],
lines 26-30) since a client is an application or system that obtains results, therefore, the
receiver (i.e. client) may determine an identity by receiving an identity.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the
Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Zarni Maung/

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